

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

THE HONORABLE ALFRED H. BENNETT, JUDGE PRESIDING

CLIFFORD F. TUTTLE, JR. et al.,

Plaintiffs,
6 vs. Case No. 4:21-cv-00270
7 CITY OF HOUSTON et al.,
8 Defendants.

STATUS CONFERENCE

OFFICIAL REPORTER'S TRANSCRIPT OF PROCEEDINGS
HOUSTON, TEXAS
OCTOBER 13, 2023

14 APPEARANCES:

15 For the Plaintiff:
16 L. Boyd Smith, Jr.
17 Boyd Smith Law Firm PLLC
18 2905 Sackett Street
19 Houston, TX 77098

18 Michael P. Doyle
19 Doyle LLP
3401 Allen Parkway, Suite 100
Houston, TX 77019

For the Defendants:
21 Alistair B. Dawson
22 Beck Redden LLP
22 1221 McKinney, Suite 4500
 Houston, TX 77010

23 Christy L. Martin
24 City Of Houston
25 900 Bagby Street, 4th Floor
Houston, TX 77002

1 H. Al Odom, III
2 Odom Law Firm
3 601 Sawyer, Suite 225
4 Houston, TX 77007

5
6 David A. Nightigall
7 David A. Nightigall PLLC
8 1545 Heights, Suite 100
9 Houston, TX 77008

10
11 Armstead C. Lewis
12 Rusty Hardin & Associates, LLP
13 1401 McKinney, Suite 2250
14 Houston, TX 77010

15
16 Melissa Azadeh
17 City of Houston Legal Department
18 P.O. Box 368
19 Houston, TX 77002-0368

20
21 Kelly A. Dempsey
22 City of Houston Legal Department
23 900 Bagby Street, 3rd Floor
24 Houston, TX 77002

25
26 Alexander E. Garcia
27 City of Houston
28 900 Bagby Street
29 Houston, TX 77002

30
31 Michelle C. Taylor
32 City of Houston
33 900 Bagby Street, 3rd Floor
34 Houston, TX 77002

35
36 Other appearances:

37 Lisa Andrews, Edward C. McClees

38
39 Reported by:

40 Cheryl Cummings, RDR-RMR-CRR-CRC
41 Official Court Reporter
42 U.S. District Court
43 Southern District of Texas

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1 P R O C E E D I N G S

2 (Proceedings commenced at 10:28 a.m., as follows:)

3 THE COURT: On Cause No. 4:21-cv-270, Tuttle
4 et al. vs. City of Houston.

5 Counsel, your appearances for the record.

6 MR. DOYLE: Good morning, your Honor. Mike
7 Doyle here for the family of Rhogena Nicholas.8 MR. SMITH: Good morning, Judge. Boyd Smith for
9 the family of Dennis Tuttle.10 MR. DAWSON: Good morning, your Honor. Alistair
11 Dawson for the City of Houston.12 MR. ODOM: Good morning, Judge. Al Adom for the
13 City of Houston also.14 MR. LEWIS: Good morning, your Honor. Armstead
15 Lewis here for Mr. Felipe Gallegos.16 MS. MARTIN: Good morning. Christy Martin for
17 Officers Gonzales and Medina.18 MS. DEMPSEY: Good morning, Judge. Kelly
19 Dempsey for Officer Salazar.20 Oh, and, Judge, we also have criminal defense
21 attorneys Lisa Andrews and Ed McClees in case the Court
22 has any questions or issues that he would like to
23 discuss with the criminal side.

24 Thank you.

25 MS. AZADEH: Good morning, your Honor. Melissa

1 Azadeh for Defendants Pardo, Lovings, and Sepolio.

2 MR. GARCIA: Good morning, your Honor.

3 Alexander Garcia for Thomas Wood and Clemente Reyna.

4 MS. TAYLOR: Good morning, your Honor. Michelle
5 Taylor on behalf of Officer Ashraf.

6 MR. NACHTIGALL: Good morning, your Honor.

7 David Nachtigall for Steven Bryant.

8 And I received a message from Dwayne Day this
9 morning who is Gerald Goines counsel. He was supposed
10 to appear telephonically, but he asked me to advise the
11 Court he's having some sort of connection issue.

12 THE COURT: Yes, sir. Thank you.

13 Counsel, this is a status conference. Again,
14 more traffic from the appellate Court. And I understand
15 that we met recently and just trying to get a sense of
16 where we're at, where we're going. Timingwise, I think
17 there has been a motion for continuance filed or a stay
18 or something. I want to get some clarity on that as
19 well.

20 So first, status from plaintiffs.

21 MR. DOYLE: Sure. It was actually a request of
22 adjustment of one of the deadlines, expert.

23 THE COURT: Yes.

24 MR. DOYLE: It had to do with the way the
25 deposition pace has been going and is intended to give

1 them time to actually review it.

2 THE COURT: Understood.

3 MR. DOYLE: We ask for a month's extension.

4 That's unopposed. There is a request to move the trial
5 that it goes with.

6 Well, in the nearly two months since we've been
7 before you, we have been able to get agreement to five
8 depositions, two of which were my 85-year-old client and
9 the widow of John Nicholas who were two days, yesterday
10 and the day before. We have I think received as of
11 yesterday a clear indication that the absolute most the
12 City would ever agree to would be fifteen depositions,
13 which means that we're basically over that by taking the
14 defendants' depositions which have been at least
15 tentatively set in February pending the Court's
16 confirmation.

17 We learned as of yesterday at 4:30 that one of
18 the defendants, Lovings, after many hours of
19 in-person/remote telephonic conference, we were told for
20 the first time yesterday he can't actually give a
21 deposition. So that number is down.

22 THE COURT: Cannot?

23 MR. DOYLE: That's what we were told yesterday
24 at 4:25 p.m. via e-mail after two months of spending
25 time discussing these depositions. Apparently, it has

1 something to do with his injuries that he sustained
2 during the raid. He's the officer I understand to be
3 paralyzed. But apparently we've been told he cannot
4 speak.

5 THE COURT: You were told that by a doctor?

6 MR. DOYLE: We were told that by a lawyer for
7 the City, Ms. Dempsey, in an e-mail -- for the first
8 time after months of going back and forth on
9 depositions, by the way, this fellow that we noticed,
10 they said he can't speak. I don't have any reason to
11 doubt that. That's what I was told in writing.

12 But the practical matter is, at this point I
13 don't personally believe, and that's why I requested
14 some time ago, that we're going to get a resolution
15 after months and months to this issue of who we can
16 depose. So by way of example, Chief Acevedo who we
17 dismissed, who is no longer an employee, his
18 agreement -- his deposition can't be agreed. The chiefs
19 below him, more or less the Monell line, they can't be
20 agreed.

21 So as a practical matter, I know you warned us
22 where it is --

23 THE COURT: It wasn't a warning.

24 MR. DOYLE: I understand. It was a promise.
25 But I think there will be a need for the Court to

1 determine who we can depose to be able to do proper
2 discovery.

3 I think there's an agreement because of the pace
4 and because of just the practical matter of where are
5 experts are, we're going to need at least another month
6 for them to be able to do a proper compliant Rule 26(f)
7 report. There are some documents' issues that I think
8 probably after conference we would need some
9 clarification. I wouldn't put it as disagreement in
10 terms of the custodial, per the order you entered.

11 And I think that lays out the waterfront from at
12 least my perspective, although Mr. Smith probably will
13 point out something that I missed.

14 MR. SMITH: Yes, your Honor. Boyd Smith.

15 The only thing to add, and we talked about this
16 with counsel, is another issue if the Court is inclined
17 to hear it today. Again, "dispute" may be too big of a
18 word, but a misunderstanding that might need some
19 clarification on the City's production of the 2019 audit
20 report. The Court may or may not recall that after this
21 Harding Street incident, Chief Acevedo ordered a full-on
22 operational audit of what happened at Harding Street,
23 what went wrong, and what needs to be changed in this
24 city to keep it from happening again. So months later
25 they came out with an audit.

1 It was produced to us by the City in redacted
2 form. We asked Mr. Dawson for an unredacted copy, and
3 instead what we got -- the original version was redacted
4 on 30 pages. Instead, what we got was a production of
5 11 unredacted pages that go to a completely different
6 version of the audit report.

7 So what we're wanting is an unredacted copy of
8 the audit report previously produced and an unredacted
9 copy of the version of the audit from which these 11
10 unredacted pages came from, which is different in its
11 substance not just the page numbers. So that's an
12 additional issue.

13 THE COURT: Mr. Dawson, can you lead us off for
14 the defense?

15 MR. DAWSON: Yes, your Honor.

16 Let me begin if I can with the deposition issue.
17 And I agree with Mr. Doyle that I think unfortunately
18 the Court is going to have to decide the number of
19 depositions that the plaintiffs are allowed to take.

20 And if I can give you the background, when we
21 were last here, you will recall that you set a schedule
22 that I think your Honor acknowledged was fairly
23 aggressive. And you told us when you were here, and I
24 went back and looked at the transcript, that in setting
25 that aggressive schedule, you wanted the parties to,

1 quote -- and this is your Honor speaking -- Refocus on
2 taking depositions that are truly important, end quote.
3 And you made the comment that this was not going to be a
4 case where there was going to be scorched-earth
5 depositions.

6 And after that, shortly after that we received a
7 request from Mr. Doyle for twenty-nine depositions in
8 Round 1 with more to come. And I said to Mr. Doyle and
9 I said to Mr. Smith in separate conversations, really
10 focus on who you really need. If you tell me who you
11 really need, we can get those arranged.

12 And they declined to do so and, instead, they
13 added to their list. So they took a deposition of
14 Lieutenant Todd this week, and they've added three more
15 people that they want to take. So now they want to
16 depose thirty-two people. And respectfully, your Honor,
17 I don't think they need all those depositions, and I'll
18 explain why.

19 Three of the officers they want to take were not
20 in Squad 15, were not part of the warrant, were not part
21 of the execution of the warrant, were not at Harding
22 Street on January 28th. I don't consider those
23 important depositions. They want to take a confidential
24 informant who, again, knows nothing about the warrant or
25 the execution of the warrant. And you can obviously

1 understand why deposing a confidential informant is
2 highly problematic.

3 And respectfully, they don't need all of the
4 individual defendant's depositions. Officer Gallegos is
5 going to testify next month. He is going to say, as
6 Mr. Harden has informed the Court, that he was the one
7 who shot and killed Ms. Nicholas and he was the one who
8 shot and killed Mr. Tuttle. And we know that two of the
9 officers never fired their guns, we know that four never
10 fired in a way that hit either of the decedents. So why
11 do they need those depositions on an excessive force
12 claim if Mr. Gallegos is going to acknowledge that he
13 was the one who killed both of the decedents?

14 THE COURT: You don't think their testimony as
15 to eyewitnesses?

16 MR. DAWSON: They could be. They could be, but
17 my suggestion -- so let me tell you where you are. They
18 have issued twenty deposition notices thus far with more
19 to come. And those dates are agreed to by the City with
20 the caveat that we respectfully submit that they should
21 ask the Court for leave to take more than the 10 that is
22 permitted in the rules.

23 And I know your Honor said at the last hearing
24 that you expected there to be between twenty and thirty
25 depositions in this case, so I get it that you're going

1 to give them more than 10. I understand that. And I'm
2 not suggesting you shouldn't, but I do think --

3 THE COURT: What's the number of actual
4 defendants in the case?

5 MR. DAWSON: I believe that there are 11
6 individual defendants.

7 THE COURT: So even under the rules, if we were
8 to follow the rules strictly, each defendant, one
9 defendant at a minimum wouldn't even be subject to a
10 deposition.

11 MR. DAWSON: I'm not suggesting that we apply
12 the rules, your Honor. What I'm suggesting is that they
13 should -- either the Court should say you get no more
14 than X, whatever the Court thinks is appropriate, or you
15 should ask them to file their motion for leave to exceed
16 the 10 that's permitted. And we'll respond to you, and
17 then you can decide what you think is appropriate.

18 But we need a limit because we have asked
19 them -- we have suggested fifteen and said, okay, if you
20 don't like that number, tell us a number. And they
21 said, no, we're not going to give you a number because
22 every time we take a deposition, we may find more people
23 that we want to depose. And we respectfully can't have
24 an unlimited number in the compressed time frame that
25 you have given us.

1 We have worked with them on scheduling, and I'm
2 not aware of any current employees that are not
3 scheduled. There's one they've asked for, this
4 Officer Armstrong, he's no longer with the department.
5 And I've tried to contact him on several occasions. I
6 even sent him a letter and haven't heard back from him.
7 He's the only one that I know of. We have arranged, for
8 example, Commander Follis who is no longer with the
9 department, he was the head of the narcotics division at
10 the time, he has agreed to his deposition.

11 So we have cooperated with them when we
12 scheduled all these, but I do think that the Court is
13 going to have to determine whether there's a cap on the
14 number that they take and, if so, what that cap should
15 be.

16 With respect to the unopposed motion, I just
17 want to point out, your Honor, that Mr. Smith contacted
18 me and asked if we would agree to it. And I agreed to
19 it with the caveat that we're asking that all the dates
20 be moved by 30 days. So that's the request that's
21 pending before you. Because the end of fact discovery
22 has a relationship to the expert discovery which in turn
23 has a relationship to when we file our dispositive
24 motions.

25 And then with respect to the document that

1 Mr. Smith made mention to, I think he and I will get
2 this worked out. But just to give you the background,
3 in the final audit, we redacted -- or, it came to me as
4 already redacted, I should say. The confidential
5 informant information was redacted. The payroll
6 numbers, you heard us talk about that before, those were
7 redacted. It also redacted the names of the officers
8 that were involved in the matters that were being
9 audited. So it would mention Officer Goines' name, but
10 whoever he was working with was redacted.

11 I did not think that was appropriate so I went
12 to try to unredact it. But believe it or not, they
13 couldn't find -- so when it came to me, someone had
14 taken a black marker and marked through the redacted
15 copy. They couldn't find a clean copy of that document.
16 Nobody could find it. And so what we did is we went
17 back to an earlier version, and I produced to Mr. Smith
18 unredacted pages that identified from an earlier version
19 so he could know who the name of the officer was that
20 Officer Goines was working with on the matters that were
21 being audited.

22 THE COURT: And I'm not prejudging a ruling on
23 the redactions or the production, but I want to make
24 sure I understood something you just represented to me.
25 You're telling me that the City of Houston's position is

1 that in regards to this raid, which has been the subject
2 of numerous lawsuits, criminal actions, media coverage,
3 that the report that looks into it, they cannot find a
4 clean copy of it?

5 MR. DAWSON: So the audit was not about Harding
6 Street. There have been many investigations about
7 Harding Street, all of which have been produced. There
8 were, I believe, two -- three SIU investigations and two
9 IAD investigations. All of that has been produced, all
10 that have we have a copy of.

11 There was an audit about other search warrants
12 that Officer Goines and Squad 15 had been involved in,
13 and they compared those search warrants to what happened
14 in other squads, and that is the document that's been
15 referred to as the final audit. It's not about Harding
16 Street, but it is about other matters that were handled
17 by Squad 15, and there is a redacted version of it.
18 They have not located an unredacted version of that
19 document.

20 But in any event --

21 THE COURT: Hold on.

22 MR. DAWSON: Okay.

23 THE COURT: I'm trying to digest what you just
24 told me because I find that extremely hard to believe.
25 I take you at your word that the audit is not about the

1 Harding -- Harding Street raid. But it does involve
2 Officer Goines who has been prosecuted both on the state
3 level and the federal level. Correct?

4 MR. DAWSON: Well, he's under Indictment.

5 THE COURT: Under Indictment. And how he went
6 about his job in securing warrants or raids or whatever
7 the case may be, there was an audit done which you have
8 a redacted copy. And somehow, as of today, the
9 representation in this federal district court is that
10 the City of Houston cannot locate an unredacted version?

11 MR. DAWSON: That is what I have been told,
12 your Honor.

13 Now, in fairness, I don't think it's going to
14 change your position or opinion about it, it does
15 involve Officer Goines -- and it's been a while since I
16 looked at it so this is from memory. It doesn't get
17 into details about how he went about his business.
18 There's a separate investigation into that, that has
19 been produced. It's more generally about how Squad 15
20 did their business, how Squad 15 compared to other
21 squads in the narcotics division, how many times they
22 had no-knock warrants, for example, how many times they
23 used confidential informants, things of that nature. It
24 is related to Harding Street, no doubt about it. But,
25 yes, I am informed -- I will go back and triple-check,

1 but I asked for it several times and that's what I've
2 been told.

3 And in relation to the issue that Mr. Smith
4 raised, he asked me yesterday if I would give him an
5 unredacted version of the draft. I need to go back and
6 look at it. I'm sure he and I will get that worked out.

7 So I'll conclude by saying we've been very
8 cooperative. We scheduled everything. I think we are
9 going to need the Court's assistance on the number of
10 depositions that you think is appropriate. And I get
11 your point about the eyewitnesses, but --

12 THE COURT: Well, I do concur with you on, given
13 the aggressive schedule that we're under, it would be
14 difficult to take every deposition that you would want.
15 And my goal in setting an aggressive schedule was, as
16 you pointed out, to focus the attention on that which
17 truly matters. And so I concur with you on that. So it
18 may not be the number that you want, but probably not
19 going to be the number that the plaintiffs want. And
20 I'm happy to visit with you in greater detail on that.

21 MR. DAWSON: And my respectful suggestion is set
22 a number, your Honor, with the understanding that, hey,
23 if it turns out you need more, you can come back and
24 ask.

25 THE COURT: Right. But I need to know -- before

1 I just pick a random number, I want to get a sense of
2 what we're talking about, what has been requested from
3 whom such that I can have a better grasp. And this
4 particular schedule we're talking about, what's
5 necessary.

6 MR. DAWSON: And to fill that in for you,
7 your Honor, there have been twenty scheduled, twenty
8 depositions scheduled.

9 THE COURT: Mutually scheduled?

10 MR. DAWSON: Mutually scheduled and noticed on
11 the dates that were scheduled.

12 I will tell you that -- not to presume the
13 Court's ruling, but anticipating that the Court might
14 grant the 30-day extension that has been requested, some
15 of those are scheduled in February. Because you had
16 said before we should take the indicted officers at the
17 end of the fact discovery period. So anticipating that,
18 some of those are scheduled in February. The total that
19 they currently asked for is thirty-two, and, you know,
20 as I said earlier, I don't agree with that number. So
21 that's kind of the universe of where we are at this
22 point.

23 THE COURT: Understood. Thank you, sir.

24 MR. DAWSON: May I be excused?

25 THE COURT: Yes, sir.

1 MR. DAWSON: Thank you.

2 Next?

3 MR. ODOM: Nothing additional for me, Judge.

4 MS. DEMPSEY: Judge, may I approach?

5 THE COURT: You may.

6 MS. DEMPSEY: Kelly Dempsey for Officer Salazar.

7 On behalf of the individual officers, a few
8 things. What we did was we made our individual clients,
9 the officers, available for a two-week period between
10 February the 5th and the 16th, which we promise we would
11 carve out that time barring if we're assigned to trial
12 or something like that. We checked with our clients to
13 make sure they could be available. And so we offered
14 those two weeks to figure out when we could take the
15 depositions during those two weeks. So we have offered
16 them for their depositions.

17 What I had asked from plaintiff's counsel was an
18 agreement that we had in other depositions, where if
19 something comes up, we can reschedule it within the same
20 time period. For example, if my client is sick that day
21 and I get notice, or something comes up, I'll need to
22 reschedule it in that two-week time period. Will you
23 work with us? And before, that had been the agreement.
24 But I guess it's not now. That was one of the questions
25 that I had asked for.

1 I also read the Court's record on August 18th,
2 and it said that we would like them to go last because
3 Judge Bennett said on page 37 they're going to go last.
4 So that's something that the Court had instructed us.

5 We also are unopposed for their motion for
6 extension of time. So we are working with them. Like
7 Mr. Dawson said, we would request that all the deadlines
8 be extended.

9 Finally, we said our criminal defendants who are
10 going to plead the Fifth or may plead the Fifth may want
11 and need their criminal defense counsel present which,
12 as the Court knows too, are here. So we said we need to
13 work with them during the two-week period also.

14 Finally, we did, as Mr. Dawson and I offered, I
15 said we can agree to fifteen because Judge Bennett said
16 on page 30 that between twenty and thirty depositions
17 would take place, and they flat-out rejected that. And
18 that's when I think Mr. Dawson and I both said, Well,
19 how many do you need? And we can't get an answer on
20 that. So our clients need a number of the depositions
21 that the Court is going to allow. And whatever
22 information the Court wants, we're happy to provide to
23 the Court to make that decision.

24 That takes care of the plaintiffs' request for
25 the extension of all deadlines, the number of

1 depositions issues, and the fact that we have made
2 everybody available in the last month of discovery
3 depending on if the Court grants an extension.

4 The final thing is with Officer Lovings. That
5 was my fault. I got the e-mail this morning before
6 coming to Court that Mr. Doyle said I will rely on your
7 assertions. I received information yesterday afternoon
8 that Lovings could not talk, so I conveyed that when I
9 sent my last e-mail yesterday afternoon before this
10 hearing to them. Since I was relying on someone else
11 who told me that, I wanted to confirm. I had just
12 confirmed this morning that we believe he can talk some,
13 so I want to withdraw that. I apologize for the error.
14 I relied on someone who I should not have relied on, on
15 that information. So I apologize for that.

16 But that's all I have, your Honor.

17 THE COURT: Much of what you said I agree with.

18 MS. DEMPSEY: Thank you, your Honor.

19 THE COURT: To start out.

20 MS. DEMPSEY: I'm going to wear this yellow suit
21 every time I'm here now. Okay.

22 THE COURT: Whatever works.

23 MS. DEMPSEY: That's what I say. Whatever
24 works.

25 THE COURT: In regards to scheduling

1 depositions -- and I always take the position until I am
2 shown otherwise, that I'm dealing with learned counsel,
3 I'm dealing with counsel that I can take at their word.
4 If you schedule a deposition and you call up and say, I
5 got pulled into a trial, I cannot be present for a
6 deposition, my client has COVID, we cannot appear for
7 the deposition, I understand that and that's reasonable.
8 And that's assuming I'm dealing with learned counsel and
9 counsel that I can take at their word. So to the extent
10 that your schedule is subject to those types of
11 communications, I respect that and I have no problem
12 with that.

13 I appreciate the clarification regarding
14 Officer Lovings.

15 MS. DEMPSEY: Yes, sir.

16 THE COURT: So I assume that you'll have another
17 conversation with plaintiffs' counsel about the
18 potential of that particular deposition going forward
19 and what that looks like with your new information.

20 I think those are the two that I need to hear
21 from. I'll defer ruling on this extension until I've
22 given each lawyer an opportunity to come up and tell me
23 their nonopposition to that. And once I've heard that,
24 I anticipate granting that.

25 So thank you, counsel.

1 MS. DEMPSEY: Thank you, your Honor.

2 MR. LEWIS: May I approach, your Honor?

3 THE COURT: Yes, sir.

4 MR. LEWIS: Armstead Lewis here on behalf of
5 Mr. Gallegos.

6 And I don't have much to add other than we have
7 scheduled the deposition of Mr. Gallegos for the end of
8 November. We're prepared to move forward with that.

9 He's prepared to move forward. And that's all I have.

10 THE COURT: Any opposition to the request for
11 extension?

12 MR. LEWIS: No, your Honor.

13 THE COURT: Very well.

14 Oh, and, counsel, one other point. You
15 mentioned -- I know there was something else. I just
16 couldn't think.

17 The availability of criminal defense lawyers for
18 their deposition, that's a reasonable request for those
19 defendants that are under Indictment and are requesting
20 that their criminal defense lawyers be present. It's
21 not a requirement, it's a request. And to the extent
22 that those defendants are seeking the presence of their
23 criminal defense lawyers, please convey that to the
24 extent that you and whomever reach agreement with the
25 plaintiffs' attorneys about the deposition date, that

1 that's an important date.

2 And my expectation is that if the criminal
3 defense attorney wishes to participate, he or she needs
4 to make that a priority on their schedule such that they
5 are, in fact, available. Because if we turn this into
6 this cannot go forward until multiple lawyers' schedules
7 align, it may be undue delay. So I understand again
8 where lawyers have important things that they need to
9 tend to. This is one of those things. And so I
10 acknowledge that that's an important consideration for
11 some of the defendants sitting for deposition, but
12 please convey to those defendants and their criminal
13 defense attorneys that if those criminal defense
14 attorneys are going to participate in the deposition at
15 the request of their client, that they need to make
16 their appearance at that deposition a priority.

17 Now, having said that, I do acknowledge there
18 may be the odd situation where another judge in another
19 building or even this building calls a criminal defense
20 lawyer in and, therefore, makes him or her unavailable.
21 I hope that that does not occur. But in the event that
22 it does, have conversation among learned counsel. I
23 would prefer -- again, I think I've been very clear
24 about this -- the respect for defendants' Fifth
25 Amendment rights, obviously the protection afforded by

1 having advice and council from criminal defense counsel.
2 It's my preference that those defendants who are seeking
3 the presence of their criminal defense attorneys have
4 them present. But we're not going to reschedule just
5 because of unmeshing schedules ad nauseam, but there are
6 certain situations, certain instances, as you well know,
7 you get called into something unexpected. And so among
8 learned counsel, I assume you can work that out and I
9 expect as much.

10 So thank you for that, that final point. I just
11 forgot to mention.

12 MS. DEMPSEY: And, your Honor, in a quick
13 response.

14 Amongst us at the City legal department, we have
15 not upheld or withheld any depositions because one
16 lawyer or two may not attend. We moved forward with
17 those depositions without even those counsel who's had
18 conflicts. So we have an agreement on the record that
19 just because some of these attorneys are not here, we're
20 accommodating the Court's scheduling order by doing
21 that. I can't speak for the criminal defense counsel,
22 but I can speak for our office in the way we're handling
23 it. So we are doing just what the Court has asked.

24 THE COURT: Thank you, counsel.

25 MS. DEMPSEY: Thank you.

1 THE COURT: Next lawyer.

2 MR. NACHTIGALL: On behalf of Steven Bryant, no
3 objection to the extension and nothing else beyond that
4 at this time.

5 THE COURT: Thank you, sir.

6 MS. AZADEH: Your Honor, on behalf of Pardo,
7 Lovings, and Sepolio, we have no opposition to the
8 extension.

9 THE COURT: And your name, for the record.

10 MS. AZADEH: Melissa Azadeh.

11 THE COURT: Thank you.

12 MR. GARCIA: Alexander Garcia for Thomas Wood
13 and Mr. Reyna. No objection to the extension, your
14 Honor.

15 THE COURT: Anything else?

16 MR. GARCIA: No, your Honor.

17 THE COURT: Thank you, sir.

18 MS. TAYLOR: Michelle Taylor on behalf of
19 Mr. Ashraf. And again, no objection. We agree with
20 Ms. Dempsey.

21 THE COURT: Very well. Thank you, counsel.

22 So in regards to the -- oh, my apologies.

23 Ms. Martin.

24 MS. MARTIN: May I approach?

25 THE COURT: With a binder as well. Come on up.

1 MS. MARTIN: On behalf of Gonzales and Medina,
2 do not oppose the, you know, 30-day extension of all the
3 deadlines.

4 The only thing I wanted to mention to the Court
5 is at the last hearing, the Court did strongly encourage
6 counsel for the plaintiffs to avoid the overtime issues.
7 And that would seriously allay some of the Fifth
8 Amendment concerns that these witnesses will surely face
9 with the current DA.

10 THE COURT: I think I also stated I'm not
11 presiding over an overtime case.

12 MS. MARTIN: Yes, you have. Many times.

13 And so in the communications that have been
14 going back and forth about negotiating these depositions
15 and getting them scheduled, there have been several
16 different requests for, Hey, are y'all going to
17 stipulate that you're not going to ask anything beyond
18 the officer-involved shooting so that we can really
19 evaluate the Fifth Amendment concerns here? The last
20 e-mail was Mr. Dawson's e-mail yesterday, and there was
21 no response to that. So we are still facing some
22 uncertainty here, and it would be helpful if that strong
23 suggestion from the Court would be converted into a more
24 direct order, perhaps.

25 THE COURT: If I understand, what you are

1 requesting is you want me to have a formal order in
2 place that, in regards to the depositions taking place
3 in this case, that plaintiffs' counsel not be permitted
4 to inquire into any potential overtime issues in regards
5 to their employment; correct?

6 MS. MARTIN: Yes, Judge.

7 THE COURT: The only caveat to that, and I don't
8 know because I'm not in the weeds on this, do any of the
9 overtime issues, i.e., the officers involved in the
10 raid, were they working overtime at that particular
11 time? Is that an issue, do you know?

12 MS. MARTIN: I do not know the answer to that
13 question. What I do know is the Indictments include
14 allegations --

15 THE COURT: What indictments?

16 MS. MARTIN: The overtime indictments from the
17 DA's office do include up to the date of the raid as a
18 potential area of criminal inquiry.

19 THE COURT: To the extent that an officer was
20 involved in the raid and his or her actions in regards
21 to that raid, their status being on normal time or
22 overtime, that would be just, you know, "Were you
23 working your normal, 40-hour a week?", for instance, or,
24 "Were you on overtime when you appeared for the raid?",
25 I think that's proper, just their status.

1 In regards to the -- and I don't know because
2 I've not read the criminal Indictment from the DA
3 regarding the overtime cases, but as to any other
4 overtime issues, again I'm not presiding over any
5 overtime matters in this case, but if an officer was
6 there on the day of the raid, I think it's fair game to
7 ask him or her, you know, "Was this your normal shift?",
8 "Was this an overtime shift?", things along that line,
9 simply their status while they were there. Understood?

10 MS. MARTIN: Understood. Thank you for the
11 clarification.

12 THE COURT: Okay. Oh, wait a minute, was that
13 it? With the binder and all, nothing else?

14 MS. MARTIN: I mean, I could go on.

15 THE COURT: Thank you, counselor.

16 All right. Let's deal with what we've agreed
17 to.

18 In regards to the requested extension, counsel,
19 I believe the request was for 30 days. And the counsel
20 for the defense stood up and said they want -- if I
21 remember correctly, I took some time in coming up with
22 this schedule, they want the other days extended by
23 30 days. So with that caveat I'll grant your request,
24 but all the other days are going to be extended by
25 30 days because I had picked those dates with precision

1 in regards to the other dates. Understood?

2 MR. SMITH: Fair enough, your Honor.

3 THE COURT: So, Ms. Edwards, in regards to those
4 dates, we'll perhaps need to have an amended scheduling
5 order prepared in that regard and I'll get that
6 executed.

7 THE CLERK: Yes, sir.

8 THE COURT: Now, counsel, in regards to anything
9 that you heard, more importantly turning our attention
10 to the number of depositions, again I'm not in the weeds
11 on your case although you've repeatedly attempted to
12 bring me there. And it's fine. So sitting here, saying
13 a proper number of depositions is fifteen versus
14 eighteen or twenty, I'm going to be picking a random
15 number. I do know that, at a minimum, that you have I
16 think I was told 11 defendants. I would assume that
17 there are some other fact witnesses and eyewitnesses who
18 are not defendants. And then after that, I assume
19 you're moving into other areas of inquiry.

20 So I'll give you an opportunity first to speak
21 to the number of depositions. Because again, it was not
22 anticipated when I came up with the schedule to push
23 this along, as you have repeatedly requested, that this
24 would be taking depositions to your heart's content,
25 uncovering or overturning every rock along the way. I

1 just don't think you would have time to do that and push
2 it to a setting that you're seeking.

3 So speaking to what is a reasonable number of
4 depositions and anything else you heard counsel mention
5 that you'd like to respond to.

6 MR. DOYLE: I guess my concern with just picking
7 a number, as the Court pointed out, is just picking a
8 number. We've done -- plaintiffs -- three depositions
9 in two months. We spent more time conferring, I think
10 pretty safely, than in those depositions.

11 THE COURT: Well, I'm under the impression that
12 there are twenty depositions on the books right
13 scheduled.

14 MR. DOYLE: That's including the ones they've --

15 THE COURT: Is that correct?

16 MR. DOYLE: That's including the ones they've
17 noticed. So for example, that includes my client; like
18 I said, my 85-year-old client. And the widow of John
19 Nicholas who died during it. It includes Lieutenant
20 Ranger Wolf who they wanted to do. And I'm not sure who
21 the other one, I think there's at least --

22 MR. SMITH: Two more.

23 MR. DOYLE: -- two more.

24 THE COURT: So five of the twenty have been
25 requested by them. So that leaves you with the fifteen

1 that we're at now that are on the books scheduled;
2 correct?

3 MR. DOYLE: I believe that's correct.

4 THE COURT: Of the fifteen that you have not
5 scheduled, of those that you have not scheduled included
6 in the fifteen, that takes the number up to thirty-two
7 or whatever they were suggesting?

8 MR. DOYLE: No, that wouldn't be accurate.

9 THE COURT: Okay. Let's get the clarification.

10 MR. DOYLE: We put the count in there as
11 twenty-four is what we're looking for.

12 THE COURT: You're looking for twenty-four.

13 MR. DOYLE: Correct.

14 THE COURT: And of the twenty-four, how many are
15 on the books scheduled right now?

16 MR. DOYLE: Fifteen, I believe.

17 THE COURT: Fifteen.

18 MR. DOYLE: But here's where I would at least
19 suggest the Court might want to look and where we tried
20 to go as opposed to, Give me a number.

21 Here's a person, Chief Acevedo. Hip deep in
22 this. He is the chief. We absolutely need to get some
23 testimony from the middle of the case as opposed to,
24 Okay, what's the problem with this one? No, you need to
25 limit it to ten or fifteen whatever it is on that

1 particular day. I don't believe that's the appropriate
2 way to go about it because we are trying to do it but we
3 can't do a case without doing the line of command. So
4 if the conversation is, Well, just pick a number, any
5 number.

6 THE COURT: No, that's definitely not the
7 conversation.

8 MR. DOYLE: Well, that's where it's been. So
9 from a practical standpoint, I can advise the Court who
10 we requested in writing, who they said, Well, until you
11 tell us ten or fifteen, we can't do it.

12 You're there. I get it.

13 THE COURT: You requested twenty-four. You
14 scheduled fifteen. My political science and math tell
15 me that leaves nine.

16 MR. DOYLE: I think that's about right.

17 THE COURT: So of nine that you do not have
18 scheduled that you requested, you mentioned the chief as
19 one. Who are the other eight?

20 MR. DOYLE: Assistant Chief Slinkard -- and this
21 is basically the line of command.

22 THE COURT: This is an assistant chief.

23 MR. DOYLE: Correct.

24 THE COURT: Who else?

25 MR. DOYLE: And Jones is another assistant

1 chief.

2 THE COURT: Assistant Chief --

3 MR. DOYLE: Jones.

4 THE COURT: -- Jones. Okay. That's three.

5 MR. DOYLE: Lieutenant Lopez who is the
6 lieutenant for this unit.

7 THE COURT: What unit?

8 MR. DOYLE: I'm sorry, I said that wrong.

9 Assistant chief. He's in the line of command.

10 THE COURT: Assistant Chief Lopez. That gets us
11 to four.

12 MR. DOYLE: The assistant chiefs and their
13 line of command and the lieutenant who we have.

14 The medical examiner.

15 THE COURT: The medical examiner. That's five.

16 MR. DOYLE: There's a City corporate
17 representative.

18 THE COURT: A City --

19 MR. DOYLE: A corporate rep. Rather than doing
20 the bunch, we think some of the documentation,
21 e-mail-type stuff can be sorted out.

22 THE COURT: By "corporate rep," you mean for the
23 City?

24 MR. DOYLE: Correct.

25 THE COURT: So that takes us to six.

1 MR. DOYLE: Hodgie Armstrong.

2 THE COURT: Who is Mr. Armstrong?

3 MR. DOYLE: That was a long-time partner of
4 Gerald Goines. Was not his partner at the time, but
5 served with him as his partner for many years.

6 THE COURT: Partner for Goines. All right.

7 That's seven.

8 MR. DOYLE: And then we've indicated potentially
9 experts -- actually, experts designated by the City, we
10 may be able to avoid those.

11 THE COURT: Okay. So that's two more.

12 MR. DOYLE: Actually, I think that's our number.
13 Anybody else? I think that's it.

14 Let me double-check with Mr. -- we tried to make
15 sure we had one line of communication. He had the last
16 line of communication that listed everybody.

17 THE COURT: Very well.

18 MR. DOYLE: That's it.

19 THE COURT: All right.

20 MR. SMITH: Yeah, I think we need to add one to
21 the number because now Lovings is back on.

22 MR. DOYLE: Well, yeah, I guess now that's
23 changed because apparently he may be able to do a
24 deposition.

25 THE COURT: Well, that's a defendant. That's

1 low-hanging.

2 MR. DOYLE: That may affect the number, and
3 that's what I'm saying.

4 THE COURT: Understood.

5 MR. DOYLE: That's it.

6 THE COURT: All right. So of the list that
7 you've just provided, that's ten with Lovings that
8 you've not scheduled. So when we talk about additional
9 depositions, this is universe we're talking about. Is
10 that correct?

11 MR. DOYLE: Yes. And that's all we've asked
12 for.

13 Now, I can't say I'll never come back --

14 THE COURT: No, that's not --

15 MR. DOYLE: -- and say, Guess what, at some
16 deposition, somebody's name came up.

17 THE COURT: -- the conversation.

18 MR. DOYLE: Understood. That's where we've been
19 at for two months, basically.

20 The first list was eighteen.

21 THE COURT: All right. For the chief, Acevedo,
22 is he still in his official capacity as a defendant?

23 MR. DOYLE: No.

24 MR. DAWSON: No, your Honor.

25 THE COURT: So he's a nonparty at this point?

1 MR. DAWSON: Correct.

2 MR. DOYLE: That is correct.

3 THE COURT: All right. And then Assistant Chief
4 Slinker?

5 MR. SMITH: Slinkard, S-l-i-n-k-a-r-d, I
6 believe.

7 THE COURT: Slinkard. And what is his role in
8 all of this?

9 MR. SMITH: It's my understanding, your Honor,
10 we learned some of this just this week at a deposition
11 of Ms. Todd, I believe the chain of command for
12 Officer Goines and his compatriots in Squad 15 went up
13 from their sergeants to Lieutenant Gonzales and then to
14 Commander Follis.

15 THE COURT: Are there any specific facts or
16 evidence that you have right now other than him being in
17 the chain of command that he had knowledge of the
18 Harding Street raid?

19 MR. SMITH: Yes, your Honor. Specifically, on
20 the Monell side of our case against the City, we have to
21 show at the policy-making level what their knowledge was
22 and what their wrongdoing was, what they ignored and
23 what they did.

24 THE COURT: Chief Acevedo cannot provide that?

25 MR. SMITH: He may or may not, Judge. We're

1 given to understand now that they don't know where he
2 is.

3 THE COURT: Let me go back -- well, he's on
4 Facebook, LinkedIn, and everywhere else from what I've
5 seen so he's not hard to find.

6 Go back to my particular question in regards to
7 the Harding Street raid, are you aware of any specific
8 fact, not eyewitness fact but fact that Assistant Chief
9 Slinkard would be aware of?

10 MR. SMITH: Not that I can represent to you
11 here.

12 THE COURT: That's fine. I'm just trying to get
13 the picture.

14 Assistant Chief Jones, same thing? What's his
15 value?

16 MR. SMITH: I believe I know that both Jones and
17 Slinkard were heavily involved in the investigation and
18 perhaps the audit, but I can't represent that as a fact
19 to the Court. But, yes, he's the same as Slinkard.

20 THE COURT: Okay. And the assistant chief or
21 Lieutenant Lopez.

22 MR. SMITH: Chief Lopez is different. We
23 learned about him a little bit this week for the first
24 time as well, and we received some documents from the
25 Harris County District Attorney's Office indicating that

1 he was interviewed about the narcotics division's
2 practice or lack thereof.

3 THE COURT: Interviewed by whom?

4 MR. SMITH: The district attorney.

5 THE COURT: Okay.

6 MR. SMITH: The question was to Chief Lopez, Why
7 did you all stop internally investigating yourselves?
8 It used to be done ten years ago, or at least this is
9 what I'm gathering from the document, and it was
10 stopped.

11 THE COURT: So this is internal procedures as
12 opposed to factual knowledge of the Harding Street raid?

13 MR. SMITH: Yes. This goes to our Monell claim,
14 Judge.

15 THE COURT: Okay. Understand.

16 The City corporate rep, what particular areas do
17 you anticipate covering there?

18 MR. SMITH: As I have explained to counsel in an
19 e-mail, we haven't determined those topics yet. It may
20 be that we don't need one, but Mr. Doyle mentioned one
21 that is conceivable which is to talk about custodians.
22 In other words, who is it at the City that's going to be
23 the custodian of electronic communications about Gerald
24 Goines' prior misconduct which we now know goes back at
25 least to 2008.

1 THE COURT: Understood.

2 And Mr. Armstrong, that was the partner of
3 Officer Goines before the raid?

4 MR. SMITH: Yes, your Honor.

5 THE COURT: All right. And then obviously, I
6 know who Mr. Lovings.

7 Thank you, sir.

8 MR. SMITH: Yes, sir.

9 MR. DAWSON: So to clarify the number, they have
10 noticed twenty depositions. That does not include what
11 we had noticed. There's the eleven individual
12 defendants. Then there are French, Nguyen, Follis,
13 Officer Jean-Louis, Mr. Cantu, and Ranger Wolf. So
14 that's seventeen and they've already taken three, so
15 that gets you to twenty.

16 THE COURT: So they've taken three and they
17 have --

18 MR. DAWSON: Noticed seventeen others.

19 THE COURT: Three taken, seventeen noticed.

20 Are any of the seventeen that are noticed
21 cross-notices?

22 MR. DAWSON: Ranger Wolf.

23 THE COURT: Okay. So of the seventeen, sixteen
24 their own doing, but you have a cross-notice for one;
25 correct?

1 MR. DAWSON: I noticed it and then they also
2 noticed it.

3 THE COURT: Understood. Okay.

4 MR. DAWSON: And so a couple of comments.

5 One is, on these other assistant chiefs, one, I
6 don't know them to have any knowledge about the Harding
7 Street incident.

8 THE COURT: I think I just asked that.

9 MR. DAWSON: And two, it seems to me that to the
10 extent that they want to have any Monell questions, that
11 could be included in their corporate rep notice, if they
12 wanted to do it that way. And --

13 THE COURT: Tell you what, I'm ready to rule.
14 I've heard enough.

15 So let me tell you that by way of the
16 plaintiffs' requested depositions, first let's start at
17 the top.

18 Chief Acevedo.

19 MR. DAWSON: I told them yesterday, he's
20 somewhere in Aurora, Colorado. That's all I know.

21 THE COURT: I believe that's an appropriate
22 deposition.

23 Next, moving to the medical examiner. I think
24 that to the extent that the medical examiner has
25 produced a report that day, that tells the injuries and

1 cause of death, that's appropriate.

2 And as you have pointed out, the city's
3 corporate representative and Mr. Lovings, by my count
4 that's four additional depositions. And that's it for
5 right now.

6 And to the extent that you need to come back and
7 request additional depositions, you can point out
8 specific areas of inquiry that you were not able to
9 cover with Officer -- I'm sorry, Chief Acevedo or the
10 City's corporate representative. So that takes care of
11 that. So by way of what has been noticed, by my count
12 you're at nineteen. I've suggested four additional ones
13 by name or title, and that takes you to a total of
14 twenty-three depositions including -- not including your
15 cross-notice. So if it turns out you need more, come
16 back with a pleading that lays out who and the specific
17 areas of testimony, and that will give the City and the
18 defendants the opportunity to respond in writing, and
19 I'll take it up at that time.

20 So you have four additional ones from when you
21 walked in the door this morning.

22 Anything else?

23 MR. DOYLE: One fact that might, at least for
24 the Court to consider, this is a pattern of practice.

25 Assistant Chief Lopez was not just -- there was

1 a reason he did this audit report that they don't have a
2 full copy of, so he looked into the pattern of practice,
3 audit, all that stuff.

4 THE COURT: Let me stop you right there because
5 I picked Chief Acevedo because I would assume the person
6 sitting atop the pyramid would have answers to all those
7 questions. So are you suggesting that, as opposed to
8 the chief, you would rather take someone a little bit
9 further down the chain of command who might have more
10 knowledge? I'm happy to substitute someone else for the
11 chief.

12 MR. DOYLE: Shot or stabbed, I'll go with
13 Chief Acevedo.

14 THE COURT: And then again, and this is not the
15 be-all-to-end-all.

16 MR. DOYLE: I understand.

17 THE COURT: If it turns out that the chief sits
18 for deposition and he demonstrates through, "I don't
19 know," "I don't recall," things of that nature, and you
20 believe -- or he identifies in his deposition someone
21 with more knowledge of the areas you're inquiring about,
22 come back and tell me and we'll deal with it at that
23 time.

24 MR. DOYLE: I think we can get him done soon.
25 Thank you, Judge.

1 MR. SMITH: Your Honor, if the Court would
2 permit, I can respond to Mr. Dawson's comments on the
3 production of the audit, or does the Court not need
4 further information on those issues?

5 THE COURT: I'm going to take Mr. Dawson at his
6 word that I believe counsel can work that out.

7 MR. SMITH: All right.

8 THE COURT: So if you're unable to do that, let
9 me know. But I think Mr. Dawson has heard from my
10 inquiry, I do find it peculiar that the City would not
11 have an unredacted copy of this considering the subject
12 matter is so important. And so Mr. Dawson has said that
13 he's going to go back and triple check his source to
14 confirm that to be the case, and then I assume he'll
15 have a conversation with you.

16 I'm sure that Mr. Dawson is going to convey to
17 whomever he's speaking at the City that there is a very
18 incredulous judge awaiting his response to that
19 particular question. So I'll let Mr. Dawson do his
20 magic, and I'll deal with it after that.

21 MR. SMITH: Thank you, your Honor.

22 THE COURT: Anything else from the plaintiffs
23 that we need to take care of today?

24 MR. DOYLE: We have another one that we think
25 we're hopefully going to be close to resolution, so I'd

1 rather not take the Court's time up with it.

2 THE COURT: Very well.

3 Sir.

4 MR. SMITH: Nothing further.

5 THE COURT: Mr. Dawson.

6 MR. DAWSON: Two quick points, your Honor.

7 First, I just want to let the Court know that
8 Chief Acevedo is not under our control.

9 THE COURT: I understand that.

10 MR. DAWSON: I have his e-mail address and I
11 intend to communicate to him that you have ordered him
12 to be deposed. Hopefully, he'll be responsive to that.
13 I just want to let you know that.

14 THE COURT: Hold on. Let me wordsmith this.

15 I have ordered that the plaintiffs can take his
16 deposition. I have not ordered Chief Acevedo to sit for
17 a deposition. There are rules in place that allow you
18 to go out and take witnesses from out of state, how that
19 is done. It is up to the plaintiffs to follow those
20 rules. I have said that he is in the number. He's one
21 of the people that they can take.

22 MR. DAWSON: I will communicate accordingly.

23 THE COURT: I don't want you to tell the chief
24 that I ordered him to show up to Houston, Texas, to do
25 something or anything like that. That's up to the

1 plaintiffs to their work and get service of process over
2 him for him to appear wherever that may be.

3 MR. DAWSON: And I will follow up with the City
4 on the unredacted document. I may not use the exact
5 wording that you used, but I will follow up and convey
6 the Court's consternation on this issue.

7 THE COURT: Fair enough.

8 MR. DAWSON: And then finally, we -- and I don't
9 want to take up the Court's time with it, we've got some
10 issues with some of their discovery responses. I'm
11 going to send a letter out probably Monday. We hope to
12 get those worked out. But in the event we don't, you
13 may get one of our letters on that, and I just don't
14 want you to be surprised if that comes up. I hope it
15 doesn't, by I just wanted to put that out there as a
16 possibility.

17 THE COURT: Again, I reiterate time and time and
18 time and time again, the quality of counsel sitting
19 around this room, the number of times that I have
20 conducted hearings, that I have given you rulings and
21 opinions about how we're going to move this case forward
22 I think should guide learned counsel's discussion about
23 how things should be done.

24 And I understand that there comes a point in
25 time, like today with the number of depositions, that

1 you need my input, and I'm happy to provide that and
2 make time for that. But my expectation is that
3 85 percent of your discovery issues learned counsel
4 should be able to work out.

5 So with that being said, anything else from the
6 defense table?

7 Seeing none, thank you again for your attention.

8 Enjoy your weekend. We're adjourned. You're
9 excused.

10 (Proceedings adjourned at 11:28 a.m.)

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C_E_R_T_I_F_I_C_A_T_E

I hereby certify that pursuant to Title 28,
Section 753 United States Code, the foregoing is a true
and correct transcript of the stenographically reported
proceedings in the above matter.

Dated this 7th day of November, 2023.

/s/Cheryl L. Cummings

Cheryl L. Cummings, RDR-CRR-RMR-CRC
Federal Official Court Reporter